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IN THE
COURT OF APPEALS OF INDIANA

BARBARA L. (DECAMP) WALKER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 05A02-0603-CR-232
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BLACKFORD CIRCUIT COURT
The Honorable Bruce C. Bade, Judge
Cause No. 05C01-0312-FB-50

March 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Barbara Walker appeals her convictions and sentences for three counts of aiding, inducing, or causing sexual misconduct with a minor as a class B felony,[1] and one count of aiding, inducing, or causing child molesting as a class C felony.[2] Walker raises two issues, which we revise and restate as:

I. Whether the trial court abused its discretion by admitting four e-mails exchanged between Walker and Bruce Decamp and by admitting Carolyn Taylor's testimony regarding Walker's jailhouse statements to her;

II. Whether the evidence is sufficient to sustain Walker's convictions; and

III. Whether the trial court abused its discretion in sentencing Walker.

We affirm in part, reverse in part, and remand.

The relevant facts follow. In 1996, Walker met Bruce Decamp in an online chat room and moved herself and her two daughters, Mi.F., born in 1987, and Me.F., born in 1991, from Illinois to Hartford City to live with Decamp. On September 26, 2002, Walker and Decamp married. In January 2003, Walker and Decamp had sex, and Walker left the room. Decamp fell asleep for about thirty minutes and then felt someone get into the bed and begin performing oral sex on him. Decamp looked down and saw Mi.F., who immediately ran out of the room, and Decamp heard Walker talking and giggling in the kitchen. Decamp went into the kitchen and asked Walker if she knew what had

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[1] Ind. Code §§ 35-42-4-9 (2004); 35-41-2-4 (2004).

[2] Ind. Code §§ 35-42-4-3 (2004); 35-41-2-4 (2004).

happened. Walker replied that she did and asked Decamp what he thought. Decamp said that he was excited. Decamp returned to the bedroom, and after a little while, Walker and Mi.F. went into the bedroom, and Decamp performed oral sex on Mi.F. while Walker was performing oral sex on Decamp. Later, Decamp had sexual intercourse with Mi.F. while Walker watched. This occurred five or six times during January, February, and March 2003.

One evening in March 2003, Walker and Decamp were naked in their bed, and Me.F. came in and asked for cigarettes from Walker. Walker implied that Me.F. needed to perform sexual favors on Decamp in order to get the cigarettes. Me.F. went to the side of the bed and grabbed Decamp's penis for fifteen to twenty seconds and then let go and walked out of the room.

Walker and Decamp separated in April 2003. During July and August 2003, Walker and Decamp exchanged e-mails that mentioned sexual activity, Me.F., and Mi.F. At some point, a woman in Elkhart with whom Decamp had a relationship broke into Decamp's e-mail account, read the e-mails, and turned them over to the police.

The State charged Walker with: (1) Count I, aiding, inducing or causing sexual misconduct with a minor as a class B felony; (2) Count II, aiding, inducing or causing sexual misconduct with a minor as a class B felony; (3) Count III, aiding, inducing or

causing sexual misconduct with a minor as a class B felony; and (4) Count IV, aiding, inducing or causing child molesting as a class C felony.[3]

Walker was incarcerated with Carolyn Taylor. Walker told Taylor that Walker, Decamp, Mi.F., and Me.F. would run around the house nude, lay on the bed or floor, and tickle each other on their private parts. Walker also told Taylor that Walker was once performing oral sex on Decamp when Mi.F. walked into the room. Walker told Mi.F. to join her or leave the room, and Mi.F. left the room.

At the jury trial, the State moved to admit e-mails sent between Walker and Decamp. Walker objected on the grounds that there was no evidence that Walker received one of the e-mails, the e-mails were not self authenticating, and there was no evidence that showed who sent the documents. The trial court overruled the objection and admitted the e-mails "subject to objections previously entered on the record." Transcript at 212. Decamp testified regarding the sexual intercourse with Mi.F. and the incident with Me.F. Mi.F. and Me.F. testified that sexual contact occurred with Decamp but denied that Walker was present. After a jury trial, the jury found Walker guilty as charged. The trial court sentenced Walker to ten years each for Counts I, II, and III, and four years for Count IV. The trial court ordered that the sentences be served consecutive to each other for a total sentence of thirty-four years.

I.

[3] Counts I, II, and III list Mi.F. as the victim. Count IV lists Me.F. as the victim.

The first issue is whether the trial court abused its discretion by admitting: (A) four e-mails exchanged between Walker and Decamp; and (B) Taylor's testimony. We review the trial court's ruling on the admission of evidence for an abuse of discretion. Noojin v. State, 730 N.E.2d 672, 676 (Ind. 2000). We reverse only where the decision is clearly against the logic and effect of the facts and circumstances. Joyner v. State, 678 N.E.2d 386, 390 (Ind. 1997), reh'g denied. Even if the trial court's decision was an abuse of discretion, we will not reverse if the admission constituted harmless error. Fox v. State, 717 N.E.2d 957, 966 (Ind. Ct. App. 1999), reh'g denied, trans. denied.

Walker argues that the e-mails and Taylor's testimony were allowed into evidence in violation of Indiana Rule of Evidence 404(b). Evid. R. 404(b) states:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pre-trial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

The effect of this rule is that evidence is excluded only when it is introduced to prove the "forbidden inference" of demonstrating the defendant's propensity to commit the charged crime. Herrera v. State, 710 N.E.2d 931, 935 (Ind. Ct. App. 1999). Evidence of uncharged misconduct which is probative of the defendant's motive and which is

"inextricably bound up" with the charged crime is properly admissible under Rule 404. Id.

A. E-Mails

The State argues that Walker waived appellate consideration of her claim because she failed to object based upon Evid. Rule 404(b). At trial, Walker objected on the grounds that there was no evidence that Walker received one of the e-mails, the e-mails were not self authenticating, and there was no evidence that showed who sent the documents. Thus, Walker did not object to the admission of the e-mails on the grounds of Ind. Evid. R. 404(b) and has waived this issue. See Jackson v. State, 712 N.E.2d 986, 988 (Ind. 1999) (holding that relevance was the only ground advanced at trial as an objection and defendant could not raise an objection based on Rule 404 for the first time on appeal).

Waiver notwithstanding, we will address the merits of Walker's arguments. Walker appears to argue that the e-mails were sexual fantasies and were sent when no illicit conduct was occurring. The State argues that the e-mails are direct references to the incidents that occurred in January, February, and March 2003. We agree.

Walker sent Decamp an e-mail dated July 16, 2003, which contains a picture and states "this is what I look at when I imagine you cumming in [Mi.F.]." State's Exhibit 4. Walker sent Decamp an e-mail dated July 16, 2003, which states in part, ". . . I guess that means she likes sex now . . . LOL and she IS home tonight . . . hehehehe." State's Exhibit 2. On July 25, 2003, Walker sent Decamp an e-mail, which states in part, "Your

bare dick going into [Mi.F.]'s pussy." State's Exhibit 3. On August 26, 2003, Decamp sent Walker an e-mail, which states in part:

> I know you wanted to get us counseling. However given that they pry very hard into all aspects of people lives, I thought it would be very unwise to pursue that given all we have done with [Mi.F.] Hell even [Me.F.] has touched my dick too. Someone would say something, I figured that would all come out in counseling by someone. You and I dont [sic] really need the stuff because there was nothing wrong with us. we [sic] did get along great. That is me and you got along the best we could possibly have. Even me doing [Mi.F.] was not a problem. It was a major turn on for both of us and she liked it too.

State's Exhibit 1. Further, the following exchange occurred during cross examination of Decamp:

> Q. So the State's Exhibits 1, 2, 3, and 4 that have been introduced make reference to nothing that's happening n [sic] either June or July, is that correct?
> A. Correct, it's, I presume.
> Q. Pardon?
> A. Referencing things that happened prior to that in January and February and March of 2003.

Transcript at 215. Based on the record, we conclude that the e-mails refer to the incidents that occurred in January through March 2003, are inextricably bound up with the charged offenses, and need not be excluded under Evid. R. 404(b).

B. Taylor's Testimony

Walker argues that "[s]imilar to the desired effect of the emails, Taylor's testimony was proffered by the State to allege a 'propensity' not an established actual behavior." Appellant's Brief at 34. Walker did not object to Taylor's testimony on the grounds of Ind. Evid. R. 404(b) and has waived this issue. See Jackson, 712 N.E.2d at

988 (Ind. 1999) (holding that relevance was the only ground advanced at trial as an objection and defendant could not raise an objection based on Rule 404 for the first time on appeal).

Waiver notwithstanding, we will address the merits of Walker's arguments. Walker points to the following exchange, which occurred during direct examination of Taylor:

> Q. Can you tell us what [Walker] talked to you about?
> A. Mostly her children and Bruce.
> Q. Was any of it sexual in nature?
> A. Some of it was.
> Q. Can you tell us about that?
> A. Well, they would mostly run around the house nude, a lot.
> Q. . . . . And who are they?
> A. The children and her and Bruce.
> Q. And what activities did she describe as happening?
> A. They would lay on the bed or they would be on the floor tickling each other.
> Q. And again, who is they?
> A. The children and her and Bruce.
> Q. And did they indicate where on the body they touched and tickled?
> A. In their, in the, just all over and sometimes their private parts.
> Q. We're all adults here, what words did she use?
> A. She used pussy.
> Q. And did she indicate that she was there when that was occurring?
> A. Well, she wasn't ticklish that much so she would get up on the couch and watch and the girls couldn't get her to tickle her, to get her tickled so they would work on, or tickle Bruce, more or less. I don't, she didn't say a bunch of stuff about it, just . . .
> Q. Did she mostly talk about [Mi.F.] or [Me.F.]?
> A. Mostly [Mi.F.].
> Q. Was there any activity that she talked about in relation to [Me.F.]?
> A. No, not much, just the tickling part of it, all of them would tickle each other but that was mostly all she said about [Me.F.].
> Q. Do you remember any conversations about [Walker] and Bruce having oral sex that included the kids?

[Walker's Attorney]: Judge, I'm going to object to the Prosecuting Attorney leading the witness.
COURT: I will overrule the objection.
A. Yes.
Q. And can you explain to the jury what, what that, what occurred?
A. Well, I guess she was, she told me one time she was giving Bruce head and [Mi.F.] walked in and she told her to join her or just go on out of the room and so she chose to go out of the room.
Q. And was that [Mi.F.] or [Me.F.]?
A. [Mi.F.]
Q. Who said that, was it [Walker] or . . .
A. [Walker].
Q. [Walker] said that.

* * * * *

Q. Carolyn, do you remember any discussions with [Walker] about e-mails?
A. A few.
Q. And can you tell us what that discussion involved?
A. They would just write each other back and forth on the computers and e-mail them, just do fantasies to each other and . .
Q. And when you say, they, can you tell us who they is?
A. Excuse me.
Q. Who is they? Who are they?
A. Bruce and [Walker].

Transcript at 227-229.

The State argues that Taylor's testimony shows Walker's "awareness of inappropriate conduct occurring in her house" and "goes to Walker's knowledge and motive for causing Decamp to have sexual intercourse with Mi.F., which apparently was to enhance her own sex life." Appellee's Brief at 11. We agree. Here, Taylor's testimony addresses the same victims as in the charged offense and illustrates Walker's involvement and knowledge. Thus, there was no error in the admission of this evidence.

See, e.g., Sanders v. State, 724 N.E.2d 1127, 1131 (Ind. Ct. App. 2000) (holding that evidence was admissible because it was "inextricably bound up" with the charged offense and "part and parcel of the charged offense"); cf. Buchanan v. State, 742 N.E.2d 1018, 1022 (Ind. Ct. App. 2001) (holding that pornographic material depicting children was inadmissible because it was not tied to defendant's relationship with the victim or to any other facts of his crime of child molesting), aff'd in relevant part, 767 N.E.2d 967, 969 (Ind. 2002).

II.

The next issue is whether the evidence is sufficient to sustain Walker's convictions. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Stewart v. State, 768 N.E.2d 433, 435 (Ind. 2002), cert. denied, 537 U.S. 1004, 123 S. Ct. 493 (2002). Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We determine whether there was substantial evidence of probative value supporting each element of the offense from which a reasonable factfinder could have found the defendant guilty beyond a reasonable doubt. Fry v. State, 748 N.E.2d 369, 373 (Ind. 2001). Evidence is insufficient to convict only when no rational factfinder could have found the defendant guilty beyond a reasonable doubt. Bradford v. State, 675 N.E.2d 296, 298 (Ind. 1996), reh'g denied.

A. Counts I, II, and III

Counts I, II, and III, alleged that Walker aided, induced or caused sexual misconduct with a minor, Mi.F. The offense of aiding, inducing or causing an offense is governed by Ind. Code § 35-41-2-4 (2004), which provides:

> A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense, even if the other person:
>
> (1) has not been prosecuted for the offense;
> (2) has not been convicted of the offense; or
> (3) has been acquitted of the offense.

The offense of sexual misconduct with a minor is governed by Ind. Code § 35-42-4-9, which provides that "[a] person . . . who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to sexual intercourse or deviate sexual conduct commits sexual misconduct with a minor" and "the offense is . . . a Class B felony if it is committed by a person at least twenty-one (21) years of age." Thus, to convict Walker of aiding, inducing or causing sexual misconduct with a minor the State needed to prove: (1) that Decamp, who was at least twenty-one years of age; (2) performed or submitted to sexual intercourse or deviate sexual conduct; (3) with Mi.F., a child at least fourteen years old but less than sixteen years old; and (4) that Walker knowingly or intentionally aided, induced, or caused Decamp to commit the crime of sexual misconduct with a minor.

Factors considered by the fact-finder to determine whether a defendant aided another in the commission of a crime include: (1) presence at the scene of the crime; (2) companionship with another engaged in a crime; (3) failure to oppose the commission of

the crime; and (4) the course of conduct before, during, and after the occurrence of the crime. Edgecomb v. State, 673 N.E.2d 1185, 1193 (Ind.1996), reh'g denied. While the defendant's presence during the commission of the crime or his failure to oppose the crime are, by themselves, insufficient to establish accomplice liability, the trier of fact may consider them along with the factors above to determine participation. Echols v. State, 722 N.E.2d 805, 807 (Ind. 2000). Furthermore, accomplice liability applies to the contemplated offense and all acts that are a probable and natural consequence of the concerted action. Wieland v. State, 736 N.E.2d 1198, 1202 (Ind. 2000).

1. Corpus Delicti

Walker argues that the "State failed to establish the corpus delicti of the crime." Appellant's Brief at 26. Specifically, Walker argues that "the corpus delicti rule prohibits her convictions from resting upon the singular statement of [Decamp] that sexual activity has occurred between him and the children, and that [Walker] knew about the acts, participated in them, and facilitated them." Id. at 28. The State argues that the corpus delicti rule does not apply to Decamp's testimony because it only applies to confessions made by the defendant. We agree.

"A *defendant's* extrajudicial confession may be introduced into evidence only if the State establishes the corpus delicti of the crime by independent evidence." Johnson v. State, 653 N.E.2d 478, 479 (Ind. 1995) (emphasis added). "This rule is designed to 'reduce the risk of convicting a defendant based on *his* confession for a crime that did not occur,' prevent coercive interrogation tactics, and encourage thorough criminal

investigations." Id. at 479 n.1 (quoting Willoughby v. State, 552 N.E.2d 462, 466 (Ind. 1990)) (emphasis added). "When a confession is not at issue, the corpus delicti rule does not apply." Lawson v. State, 803 N.E.2d 237, 240 (Ind. Ct. App. 2004), trans. denied. Because Walker did not confess, we conclude that the corpus delicti rule does not apply. See, e.g., Malinski v. State, 794 N.E.2d 1071, 1086 (Ind. 2003) (addressing defendant's argument that the State failed to prove corpus delicti by noting that the case was "not a confession case," that the defendant "maintained his innocence at all times," and holding that the question was whether the evidence was sufficient to allow a jury to find that the victim was dead and the defendant killed her); Lawson, 803 N.E.2d at 240 (holding that defendant's claim failed because a confession was not at issue).

2. Testimony of Me.F. & Mi.F.

Walker points out that Mi.F. testified that she had intercourse with Decamp in January 2003 but that Walker was at work at the time and Mi.F. never told Walker about the incidents. Walker also points out that Me.F. testified that Walker was never present during any sexual encounter that Me.F. had with Decamp. Decamp testified that he awoke to find Mi.F. performing oral sex on him and when he asked Walker if she knew what had happened, Walker replied that she did and asked Decamp what he thought. Decamp also testified that he, Walker, and Mi.F. went into the bedroom and that Decamp performed oral sex on Mi.F. while Walker was performing oral sex on Decamp. Later, Decamp had sexual intercourse with Mi.F. while Walker watched. Decamp also testified that this occurred five or six times between January 2003 to March 2003. Walker merely

asks that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. K.D. v. State, 754 N.E.2d 36, 38-39 (Ind. Ct. App. 2001).

3. Timing

Walker also argues that "there was no evidence presented by the State regarding the commission of any criminal acts during February and March 2003." Appellant's Brief at 25. Walker argues that Decamp's general statement that there were five or six encounters from January through March 2003, is not sufficient to support a conviction in Count II, which charged Walker with aiding, inducing or causing Mi.F. to perform or submit to sexual intercourse or deviate sexual conduct by Decamp in February, or Count III, which charged Walker with aiding, inducing or causing Mi.F. to perform or submit to sexual intercourse or deviate sexual conduct by Decamp in March.

The following exchange occurred on direct examination of Decamp:

Q. Okay, I want to switch gears here and I want you to testify about what you recall happening, I mean what you recall telling Detective Ricks (inaudible) Was there sexual acts that occurred in January of 2003, involving [Mi.F.], yourself and [Walker]?
A. Yes.
Q. And that was at least one you testified to?
A. Yes.
Q. Were there others in January?
A. I can't recall.

* * * * *

Q. Did all of the incidents that occurred, occur at your house that involved the three of you?
A. Involved the three of us from January 2003 to March 2003, yes, sir.
Q. And I believe, did any of those occur in February of 2003?
A. Yes, sir.

Q. And did any of those occur in March of 2003?
A. Yes, sir.

Transcript at 213-214. Decamp's testimony is sufficient to support the element that sexual misconduct occurred in February and March.

B. Count IV

Walker also argues that the evidence was insufficient to support a conviction for Count IV, which stated, in part:

> [O]n or about March, 2003, in Blackford County, State of Indiana, [Walker], aided, induced or caused a person, to wit: [Decamp], to perform or submit to a fondling or touching of the child under fourteen (14) years of age, to-wit: [Me.F.] who was born on January 17, 1991, or the older person with intent to arouse or to satisfy the sexual desires of either child or the older person, and did thereby commit Child Molesting, a Class C Felony.
>
> All of which is contrary to the form of the statute in such cases made and provided, to-wit: I.C. 35-42-4-3(b), and against the peace and dignity of the State of Indiana.

Appellant's Appendix at 11.

The offense of child molesting as a class C felony is governed by Ind. Code § 35-42-4-3(b), which provides that "[a] person who, with a child under fourteen (14) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits child molesting, a Class C felony." Thus, to convict Walker of aiding, inducing or causing child molesting as a class C felony, the State was required to prove: (1) that Decamp; (2) performed or submitted to; (3) fondling or touching; (4) of Me.F., a child under the age of fourteen; (5) with the intent to arouse either Decamp or Me.F.; and

(6) that Walker knowingly or intentionally aided, induced, or caused Decamp to commit the crime of child molesting.

1. Me.F.'s Testimony

Again, Walker appears to rely on Me.F.'s testimony that Walker was not present during any sexual encounter she had with Decamp. However, Decamp testified that he was naked in bed with Walker when Me.F. walked into the room asking for cigarettes. Decamp testified that Walker implied Me.F. needed to do sexual favors for the cigarettes and Me.F. grabbed Decamp's penis for fifteen to twenty seconds. Walker merely asks that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. K.D., 754 N.E.2d at 38-39.

2. Intent to Arouse

Walker argues that "there was no evidence presented that the act of [Me.F.] holding [Decamp]'s penis for 15-20 seconds was done 'with the intent to arouse or satisfy the sexual desires of either [Me.F.] or [Decamp].'" Appellant's Brief at 25. "A person's intent may be determined from their conduct and the natural consequences thereof and intent may be inferred from circumstantial evidence." J.J.M. v. State, 779 N.E.2d 602, 606 (Ind. Ct. App. 2002). "Furthermore, the intent to gratify required by the statute must coincide with the conduct; it is the purpose or motivation for the conduct." Id.

Decamp's intent may be inferred from his conduct and the natural consequences thereof. The record reveals that Walker and Decamp were naked in their bed and that Me.F. came in and asked for cigarettes from Walker. Walker implied that Me.F. needed

to perform sexual favors on Decamp in order to get the cigarettes, and Me.F. went to the side of the bed and grabbed Decamp's penis for fifteen to twenty seconds and then let go and walked out of the room. This evidence is sufficient to demonstrate that Decamp was acting with the intent to arouse or satisfy his own or Me.F.'s sexual desires. See, e.g., Craun v. State, 762 N.E.2d 230, 239 (Ind. Ct. App. 2002) (holding that the evidence was sufficient to support finding that defendant touched the victim with the intent to arouse or satisfy his sexual desires), trans. denied.

In summary, evidence of probative value exists from which the jury could have found Walker guilty of the charged offenses. See, e.g., Neaveill v. State, 474 N.E.2d 1045, 1051 (Ind. Ct. App. 1985) (holding that the evidence was sufficient to establish that defendant aided and abetted her husband in committing the offenses of child molesting).

III.

The next issue is whether the trial court abused its discretion in sentencing Walker.[4] Sentencing decisions rest within the discretion of the trial court and are reviewed on appeal only for an abuse of discretion. Smallwood v. State, 773 N.E.2d 259, 263 (Ind. 2002). An abuse of discretion occurs if "the decision is clearly against the logic

[4] Indiana's sentencing scheme was amended effective April 25, 2005, to incorporate advisory sentences rather than presumptive sentences. See Ind. Code §§ 35-38-1-7.1, 35-50-2-1.3. Walker committed her offenses prior to the effective date and was sentenced on November 28, 2006. Neither party argued to the trial court or on appeal that the amended sentencing statutes should be applied. Consequently, we will apply the version of the sentencing statutes in effect at the time Walker committed her offense. Moreover, the application of the amended sentencing statute would not change the result here.

and effect of the facts and circumstances." Pierce v. State, 705 N.E.2d 173, 175 (Ind. 1998). In order for a trial court to impose an enhanced sentence, it must: (1) identify the significant aggravating factors and mitigating factors; (2) relate the specific facts and reasons that the court found to those aggravators and mitigators; and (3) demonstrate that the court has balanced the aggravators with the mitigators. Veal v. State, 784 N.E.2d 490, 494 (Ind. 2003). Walker argues that the trial court: (A) failed to consider certain mitigators; and (B) abused its discretion by imposing consecutive sentences.

A. Mitigators

Walker argues that the trial court "erred in failing to impose the minimum six year, and two year sentences authorized by law." Appellant's Brief at 12. Walker appears to argue that the trial court failed to consider certain mitigators. Specifically, Walker argues:

> The Judge found no mitigating factors, but he also made no attempt to identify any mitigation. (The pre-sentence report identified that [Walker] had obtained an associate college degree, and a nursing degree. The pre-sentence report also reflects that [Walker] had been gainfully employed as a nurse prior to her arrest, and as an office building manager in a local chiropractic office since her release pending trial. [Walker] lost her nursing license as a result of her arrest.

Id. at 11.

"The finding of mitigating factors is not mandatory and rests within the discretion of the trial court." O'Neill v. State, 719 N.E.2d 1243, 1244 (Ind. 1999). The trial court is not obligated to accept the defendant's arguments as to what constitutes a mitigating factor. Gross v. State, 769 N.E.2d 1136, 1140 (Ind. 2002). "Nor is the court required to

give the same weight to proffered mitigating factors as the defendant does." Id. Further, the trial court is not obligated to explain why it did not find a factor to be significantly mitigating. Sherwood v. State, 749 N.E.2d 36, 38 (Ind. 2001), reh'g denied. However, the trial court may "not ignore facts in the record that would mitigate an offense, and a failure to find mitigating circumstances that are clearly supported by the record may imply that the trial court failed to properly consider them." Id. An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. Carter v. State, 711 N.E.2d 835, 838 (Ind. 1999).

Walker only directs us to the presentence investigation report, which states that she was employed from March 2002, until December 2003, when she was fired, and that she had been employed at a chiropractic office from November 15, 2004, until November 9, 2005. Walker has failed to establish that the mitigating evidence is both significant and clearly supported by the record. Thus, the trial court did not abuse its discretion by not considering Walker's work history as a mitigating circumstance. See, e.g., Bennett v. State, 787 N.E.2d 938, 948 (Ind. Ct. App. 2003) (holding that the trial court properly did not find that defendant's employment was a significant mitigating circumstance where defendant did not present a specific work history, performance reviews, or attendance records), trans. denied.

B. Consecutive Sentences

Walker argues that the trial court erred when it ordered all four sentences to be served consecutively because the trial court found no aggravating factors. "In order to impose consecutive sentences, a trial court must find at least one aggravating circumstance." Ortiz v. State, 766 N.E.2d 370, 377 (Ind. 2002); see Ind. Code § 35-50-1-2(c). "When a trial court imposes consecutive sentences, when not required to do so by statute, this Court will examine the record to insure that the trial court explained its reasons for selecting the sentence imposed." Ortiz, 766 N.E.2d at 377. The trial court's statement of reasons must include: "(1) the identification of all significant aggravating and mitigating circumstances; (2) the specific facts and reasons that lead the court to find the existence of each such circumstance; and (3) an articulation demonstrating that the mitigating and aggravating circumstances have been evaluated and balanced in determining the sentence." Id.

At the sentencing hearing, the trial court stated:

> In this case there is no past criminal record and also, since the jury did not make a determination of aggravating circumstances, the Court is not able to find aggravating circumstances either. The Court does not agree with [Walker's attorney] that, and I'm not sure you said it, [the prosecutor] thought that you said it is that the Court cannot make consecutive sentences on the base sentence. I would agree with you that the Court cannot find aggravating circumstances and add to the basic sentence of ten years. Accordingly, the Court is going to sentence [Walker] for a period of ten years for each one of the Class "B" felonies, three in total for, and make them consecutive for a total of 30 years and the basic sentence of four years for the Class "C" felony for, and make that consecutive for a total of 34 years.

Transcript at 296-297. The trial court's sentencing order states, in part:

[T]he Court now finds as follows:

1. That there are no aggravating circumstances.
2. That due to the fact that the crimes committed involved multiple molestation charges where the defendant's daughters were the victims, the Court does not find mitigating circumstances.

Appellant's Appendix at 257. The trial court abused its discretion by ordering that the sentences be served consecutively because the trial court found "no aggravating circumstances." Id. See, e.g., Taylor v. State, 442 N.E.2d 1087, 1092 (Ind. 1982) (holding that trial court erred by imposing consecutive sentences when the trial court specifically found no aggravating circumstances). Thus, we remand with instructions to impose concurrent sentences. See, e.g., id.

For the foregoing reasons, we affirm Walker's convictions for three counts of aiding, inducing, or causing sexual misconduct with a minor as class B felonies, and one count of aiding, inducing, or causing child molestation as a class C felony, and remand to revise Walker's sentences to run concurrently.

Affirmed in part, reversed in part, and remanded.

MATHIAS, J. concurs

KIRSCH, J. concurs in part and dissents in part with separate opinion

IN THE
COURT OF APPEALS OF INDIANA

BARBARA L. (DECAMP) WALKER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 05A02-0603-CR-232
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BLACKFORD CIRCUIT COURT
The Honorable Bruce C. Bade, Judge
Cause No. 05C01-0312-FB-50

KIRSCH, Chief Judge, ***concurring in part and dissenting in part.***

I full with concur with the decision to affirm Walker's convictions, but I depart from my colleagues on the decision to remand with instructions to impose concurrent

sentences in what constitutes a particularly heinous and despicable series of crimes in which the defendant participated in and facilitated the sexual molestation of her two daughters. Although the trial court did not make a specific finding of aggravating circumstances (and, indeed, as set out in the majority opinion specifically found that there were no aggravating circumstances), it specifically found that the crimes of which Walker was convicted "involved multiple molestation charges where the defendant's daughters were the victims." To me, this is a sufficient finding upon which to base an order for consecutive sentences. Without regard to the trial court's characterization of such factors, the facts that the victims were the defendant's daughters and that they were subjected to multiple acts of molestation establishes the following aggravators: the victims of the crimes were the defendant's daughters with whom she occupied a position of trust; there were separate victims; and there were multiple acts of molestation. To me, remanding for the imposition of concurrent sentences because the trial court did not specifically characterize these factors as aggravators elevates form over substance. More importantly, it allows the perpetrator of truly despicable crimes a most lenient sentence.

I would affirm the trial court in all respects.